

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Improving Public Safety Communications in)	WT Docket No. 02-55
The 800 MHz Band)	
)	
Consolidating the 900 MHz Industrial/Land)	
Transportation and Business Pool Channels)	

To: The Commission

Ex-Parte Comments in Support of the Balanced Approach

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast (Blooston), on behalf of its clients listed in Attachment A hereto who utilize spectrum in the 800 MHz band for commercial and private internal uses, hereby submits the foregoing ex-parte comments in the above-captioned proceeding in support of the “Balanced Approach” proposal proffered by the 800 MHz User Coalition in its meetings with the Commissioners and various senior staff members of the Wireless Telecommunications Bureau and its Public Safety and Private Wireless Division.

The Balanced Approach is designed as a “forward looking” approach that will immediately resolve interference in the 800 MHz band more effectively and with less disruption and cost to incumbent licensees in the 800 MHz band. The premise of the Balanced Approach for resolving interference issues in the 800 MHz band is simple: “[S]omething must be done in the near term to address interference [in the 800 MHz band] that is more immediate, more effective, less disruptive and less costly than the

‘Consensus Plan.’” 800 MHz User Coalition Balanced Approach at 1. This is exactly what Blooston has urged in its comments and reply comments at every step in this proceeding. Accordingly, Blooston strongly supports the more sensible solution offered by the Balanced Approach.

I. The Balanced Approach Places the Costs and Burdens for Resolving Interference Where it Belongs – On the Party Causing the Interference.

The Balanced Approach places responsibility to expeditiously resolve 800 MHz interference issues in a cost-effective manner where it belongs – on the party that causes the interference. This solution is consistent with the record in this proceeding, which continues to support the conclusion that the best course of action is to utilize technical solutions in order to remedy interference concerns, rather than restructuring the 800 MHz band. February 10, 2003 Comments of Verizon Wireless at 14 – 15; Comments of Cellular Telecommunications & Internet Association at 11; May 6, 2002 Comments of Fairfax County at 4; Comments of Motorola at 24; Comments of Private Wireless Coalition at 12 – 13 (supporting use of technical solutions on an interim basis pending any future frequency relocations); Comments of Verizon Wireless at 8-10; Comments of Consumers Energy Company at 11. This conclusion is bolstered by the terms of Nextel’s Revised Plan, which concedes that further interference mitigation steps will be required even after completion of the complex and inordinately expensive 800 MHz rebanding. See Revised Plan at 39, Appendix F (which proposes a different methodology from the Best Practices for this Purpose); February 10, 2003 Comments of ALLTEL

Communications at 14 – 17; Comments of The National Rural Electric Cooperative Association at 6. Further, data contained in APCO's database, which reflects that only 1 percent of public safety systems reported interference incidents last year. Balanced Approach at 1. Because of the relatively few instances of interference, Blooston agrees that a common sense approach, which starts with mitigation of existing interference problems and prevention of future problems with minimal disruption of existing operations, is the proper course. Following Nextel's Consensus Plan would disrupt 100 percent of the Public Safety systems as well as B/ILT and analog SMR licensees in the 800 MHz.

As previously demonstrated in the record, the use of well-established mitigation methods, the Best Practices Guide, and sound engineering practices, will result in mitigation of much of the interference experienced by public safety entities. May 6, 2002 Comments of Fairfax County at 5. This is because it appears that the architecture of Nextel's system may be exacerbating the interference problem, Id. at 4 – 5, even though there are limited instances of interference from cellular telephone operations. February 10, 2003 Comments of Nextel Communications, Inc. and Nextel Partners, Inc. at 6; May 6, 2002 Joint Comments of Cingular Wireless, LLC and ALLTEL Communications, Inc. at 2-3; Comments of United States Cellular Corporation at 3. The record further demonstrates that, while such instances of cellular interference have been few and far between, cellular carriers have been able to utilize sound engineering practice and mitigation techniques to promptly resolve such interference. May 6, 2002 Joint

Comments of Cingular Wireless, LLC and ALLTEL Communications, Inc. at 3;
Comments of United States Cellular Corporation at 3.

Rebanding the 800 MHz band, as urged by Nextel, is likely to cost well over a billion dollars (especially when soft costs such as lost productivity, inconvenience to customers, etc., are factored in). This money would be far better spent elsewhere, especially given the difficulties facing telecommunications operations on Wall Street. Further, rebanding would substantially disrupt communications by 800 MHz licensees during the transition to new channels. Because rebanding the 800 MHz band would be such a major and costly undertaking, with significant disruptions not only to public safety licensees but also to incumbent analog SMR, B/ILT and cellular licensees, the 800 MHz User Coalition is correct that the Commission should use less drastic measures to remedy this problem. Simply put, licensees causing interference to others should be required to utilize technical solutions such as (a) installing filtering equipment to eliminate spurious emissions and intermodulation products; (b) reconfiguring cell-site transmitters to reduce the potential for interference to 800 MHz public safety and B/ILT receivers, (c) using “tighter” specifications in the design of CMRS systems and sound engineering practices to reduce the potential for interference in the first instant. February 10, 2003

Supplemental Comments of Consumers Energy Company at 4; May 6, 2002 Comments of Fairfax County at 6; Comments of Snohomish County Emergency Radio System at 1; Consumers Energy Company at 6, 8-9, 11.

II. The Balanced Approach Provides an Efficiently Structured Methodology for Resolving Interference in the 800 MHz Band.

The Balanced Approach includes specific procedures that are designed to both eliminate instances of interference and prevent the reoccurrence of interference in the future. Specifically, the Balanced Approach has outlined a series of steps which are designed to identify and promptly address interference, including: (a) steps for making interference complaints; (b) steps for responding to interference complaints; (c) on-site analysis following an interference complaint; and (d) mitigation steps which impose a duty on the complaining party to cooperate in the implementation of the most cost-effective solution for resolving the interference. Balanced Approach at 4-5. These steps set up a specific procedure that is to be followed by all parties in resolving interference. Because the procedures include a short time-line for consultation, analysis and resolution of interference problems, as well as a mandate for cooperation to do so in the most cost effective manner possible, the Balanced Approach will be an effective solution, without causing major disruptions to the rest of the 800 MHz licensees in the area.

The Balanced Approach also proposes rule modifications which would: (a) require licensees to comply with the procedures in Attachment A to the Balanced Approach; (b) require licensees to calculate the percentage of degradation for land mobile systems using the TSB-88 algorithm in order to determine potential interference from digital operations on channels directly adjacent to proposed facilities; (c) require licensees to use external filtering and/or other equipment as may be necessary to reduce

or eliminate interference; (d) follow the “APCO Best Practices” recommendation to require user receiver equipment in the 806-824/851-869 MHz band provide a minimum of 75dB intermodulation specification; (e) limit low-site systems in the 806-824/851-869 MHz band with an antenna height of 30 meters or less to 100 watts per 25 kHz channel;¹ (f) require all base station operations in the 806-824/851-869 MHz band to comply with a unified procedure concerning emission restrictions under Section 90.543; (g) establish adjacent channel spacing standards for use in coordinating non-EA channels, to facilitate the ability of frequency coordinators to review the spacing of channels adjacent to the frequency under consideration, as well as co-channel spacing, during the coordination process; (h) resolve any interference that remains after utilizing the above measures, through “Enhanced Best Practices” such as careful redesign of antenna systems, filters and other non-transmitter specific remedies. Balanced Approach at 6-8.

The technical rule changes proposed by the 800 MHz User Coalition would provide the necessary structure to ensure that interference does not remain a recurring issue. Rather, through engineering and design, the rules would permit the co-existence of low-site systems used by Nextel and other carriers with analog public safety and other industrial users. And in those instances where the technical rule changes do not prevent interference, use of the “Enhanced Best Practices” would mandate the use of better design and other measures to prevent interference – all without the major undertaking

¹ The Balanced Approach proposes that “Low sites” would be defined similarly to the “cellular” definition offered by the Consensus Plan as (a) sites that are included within a system with five or more overlapping sites with hand-off capability; (b) with twenty or

proposed by Nextel to restructure the 800 MHz band, which the record reflects would not guarantee an interference-free environment despite the large financial cost to Nextel and other 800 MHz users.

III. Funding for the Nextel Plan is Inadequate

The 800 MHz Users Coalition properly reiterates that the funding for Nextel's Revised Consensus Plan is, at best, questionable. Letter from Jill Lyon to Marlene H. Dortch dated August 8, 2003. A review of the funding mechanism for the Nextel Consensus Plan, reflects that it has been constructed in a manner in which there will be no certainty that the 800 MHz rebanding will ever be implemented on a nationwide basis. This is because Nextel has not provided a firm commitment to ensure that all costs associated with the 800 MHz rebanding are paid.

In particular, Nextel has offered \$850 million, of which \$150 million is earmarked for relocation expenses encountered by B/ILT licensees in the 800 MHz rebanding process. Revised Plan at 5. Tied to this offer is a significantly "watered-down" payment plan and provisions which would ensure that Nextel pays the minimal amount for each relocation. See February 10, 2003 Supplemental Comments of Consumers Energy Company at 10; Comments of the National Association of Manufacturers and MRFAC at 19). Such tactics include the use of unfair binding arbitration proceedings that have been described as baseball style arbitration, in as much as the arbitrator would not be permitted to fashion his own resolution; unreasonably short deadlines to provide information

more operating frequencies; and (c) with antennae at a height of up to 30 meters above

regarding system parameters, with severe penalties for a failure to meet the deadline; the threat of license revocation for failure to reach a license relocation agreement, unless the parties are in binding arbitration. All of these mechanisms would give Nextel an unfair advantage over small incumbent B/ILT licensees.

The record in this proceeding also reflects the concerns of several commenters that Nextel's funding commitment to rebanding the 800 MHz band is inappropriately capped at \$850 million, and that the financing plan amounts to "smoke and mirrors." February 10, 2003 Comments of Ameren Corporation at 3-5; Comments of Harbor Wireless, LLC at 7-10; Supplemental Comments of Consumers Energy Company at 22-23; Comments of ALLTEL et. al. at 10, 12-13. Unlike Nextel's original plan, Nextel is no longer willing to pay 100 percent of its contribution up front. Rather, Nextel has only offered to pay \$25 million up front, which is a mere 2.9 percent of the total \$850 million that Nextel claims will be required to complete the retuning process. Revised Plan at 7. While Nextel has proposed to secure its remaining obligation by either (a) placing its 1.9 GHz nationwide license in a subsidiary and pledging the stock of that subsidiary to a fund administrator or (b) pledging "cash or cash equivalents (Revised Plan at 8, n. 9), it has reserved the right, in its sole discretion, to substitute other assets or securities of "equal value"² and to retain the 1.9 GHz license free and clear of any liens, subject to the

ground level. Balanced Approach at 6.

² The uncertain foundation for Nextel's plan is demonstrated by its proposal to utilize "other securities" (instead of its requested 1.9 GHz nationwide license) in order to secure a debt of \$850 million. Because of the volatile nature of the securities markets, there is no reasonable certainty that the securities pledged will retain their value at any time in the

“reasonable” consent of the remaining Consensus Parties. Id. This approach clearly places into question the security of Nextel’s payment obligation, especially if Nextel defaults and/or is forced into bankruptcy protection. If this were to happen, Nextel’s obligation under the Revised Plan would presumably be extinguished, thereby jeopardizing funding for whatever portion of the 800 MHz band relocation remains.

IV. Conclusion.

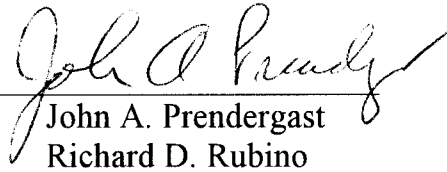
The Balanced Approach provides a legitimate solution to resolving the 800 MHz band public safety interference problem. Unlike the Revised Plan proffered by Nextel and its consensus partners, the Balanced Approach is a realistic solution that will resolve interference in an efficient, cost-effective manner, and proactively implement steps to prevent future interference. In this regard, Nextel has admitted in the record that it has been able to resolve interference issues on a case-by-case basis. February 10, 2003 Comments of Nextel at 8. While it is possible that a case-by-case resolution may be less convenient for Nextel (and potentially more expensive than desired), the Commission should nonetheless adopt the Balanced Approach. This plan would require Nextel (or any other offending licensee) to resolve the interference to public safety licensees in a manner that does to result in any unwarranted costs (financial or otherwise) to the public

future. One need only look to the stock markets over the past few years to see precipitous drops in values for major telecommunications carriers and other Fortune 500 companies.

safety or other 800 MHz licensees. The record in this proceeding clearly demonstrates that Nextel's operations are the primary source of the interference.

Respectfully submitted,

**BLOOSTON, MORDKOFKY,
DICKENS, DUFFY & PRENDERGAST**

By 
John A. Prendergast
Richard D. Rubino

Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, N.W., Suite 300
Washington, D.C. 20037
Tel (202) 659-0830
Filed: November 4, 2003

Attachment A

Electronic Specialties, Inc.

Computer Car, Inc.

US Unwired, Inc.

Copper Valley Wireless, Inc.

Radio Communications Systems, Inc. d/b/a RCS Communications

3M Company

CC Communications

Southern Illinois RSA Partnership

Instant Signal & Alarm Co., Inc.

Thelen Sand & Gravel, Inc.

Clarkson Construction Company, Inc.

Mobile Phone of Texas, Inc.

Service List

The Honorable Michael Powell, Chairman
Federal Communications Commission
445 12th Street, S.W., Mail Stop CM-CH
Washington, D.C. 20554

The Honorable Kathleen Q. Abernathy, Commissioner
Federal Communications Commission
445 12th Street, S.W., Mail Stop CM-KA
Washington, D.C. 20554

The Honorable Michael J. Copps, Commissioner
Federal Communications Commission
445 12th Street, S.W., Mail Stop CM-MC
Washington, D.C. 20554

The Honorable Kevin J. Martin, Commissioner
Federal Communications Commission
445 12th Street, S.W., Mail Stop CM-KM
Washington, D.C. 20554

The Honorable Jonathan S. Adelstein, Commissioner
Federal Communications Commission
445 12th Street, S.W., Mail Stop CM-JA
Washington, D.C. 20554

John Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Mail Stop 3-C252
Washington, D.C. 20554

D'Wana R. Terry, Chief
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4th Floor
Washington, D.C. 20554